



February 23, 2005

## HOUSE BILL No. 1281

DIGEST OF HB 1281 (Updated February 22, 2005 12:11 pm - DI 69)

**Citations Affected:** IC 13-11; IC 13-18.

**Synopsis:** Wetlands. Provides that an exempt isolated wetland may be an isolated wetland that is located on land: (1) subject to regulation under United States Department of Agriculture wetland conservation programs, including Swampbuster and the Wetlands Reserve Program, because of voluntary enrollment in a federal farm program; and (2) used for agricultural or other purposes allowed under the programs. Provides that a wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation.

**Effective:** July 1, 2005.

**Wolkins**

January 11, 2005, read first time and referred to Committee on Environmental Affairs.  
February 22, 2005, amended, reported — Do Pass.

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HB 1281—LS 6973/DI 69+



February 23, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1281

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-74.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 74.5. (a) "Exempt  
3 isolated wetland", for purposes of IC 13-18 and environmental  
4 management laws, means an isolated wetland that:

5 (1) is a voluntarily created wetland unless:

6 (A) the wetland is approved by the department for  
7 compensatory mitigation purposes in accordance with a permit  
8 issued under Section 404 of the Clean Water Act or  
9 IC 13-18-22;

10 (B) the wetland is reclassified as a state regulated wetland  
11 under ~~IC 13-18-22-6(c)~~; **IC 13-18-22-6(e)**; or

12 (C) the owner of the wetland declares, by a written instrument:

13 (i) recorded in the office of the recorder of the county or  
14 counties in which the wetland is located; and

15 (ii) filed with the department;

16 that the wetland is to be considered in all respects to be a state  
17 regulated wetland;

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- (2) exists as an incidental feature in or on:  
 (A) a residential lawn;  
 (B) a lawn or landscaped area of a commercial or governmental complex;  
 (C) agricultural land;  
 (D) a roadside ditch;  
 (E) an irrigation ditch; or  
 (F) a manmade drainage control structure;  
 (3) is a fringe wetland associated with a private pond;  
 (4) is, or is associated with, a manmade body of surface water of any size created by:  
 (A) excavating;  
 (B) diking; or  
 (C) excavating and diking;  
 dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;  
 (5) subject to subsection (c), is a Class I wetland with an area, as delineated, of one-half (1/2) acre or less;  
 (6) subject to subsection (d), is a Class II wetland with an area, as delineated, of one-fourth (1/4) acre or less;  
 (7) is located on land:  
 (A) subject to regulation under ~~the~~ United States Department of Agriculture wetland conservation ~~rules~~, **also known as programs, including Swampbuster and the Wetlands Reserve Program**, because of voluntary enrollment in a federal farm program; and  
 (B) used for agricultural or ~~associated~~ **other** purposes allowed under the ~~rules~~ **programs** referred to in clause (A); or  
 (8) is constructed for reduction or control of pollution.  
 (b) For purposes of subsection (a)(2), an isolated wetland exists as an incidental feature:  
 (1) if:  
 (A) the owner or operator of the property or facility described in subsection (a)(2) does not intend the isolated wetland to be a wetland;  
 (B) the isolated wetland is not essential to the function or use of the property or facility; and  
 (C) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and  
 (2) if the isolated wetland satisfies any other factors or criteria established in rules that are:

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(A) adopted by the water pollution control board; and

(B) not inconsistent with the factors and criteria described in subdivision (1).

(c) The total acreage of Class I wetlands on a tract to which the exemption described in subsection (a)(5) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(5); and

(2) fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(5) but for the limitation of this subsection.

(d) The total acreage of Class II wetlands on a tract to which the exemption described in subsection (a)(6) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(6); and

(2) thirty-three and one-third percent (33 1/3%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(6) but for the limitation of this subsection.

(e) An isolated wetland described in subsection (a)(5) or (a)(6) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under subsection (a)(5) or (a)(6) consistent with the applicable limitations described in subsections (c) and (d).

SECTION 2. IC 13-18-22-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as otherwise specified in ~~subsection~~ **subsections (b) and (c)**, compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested



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1	Class III	Class III	2 to 1	2.5 to 1
2			Nonforested	Nonforested
3			2.5 to 1	3 to 1
4			Forested	Forested

5 (b) The compensatory mitigation ratio shall be lowered to one to one  
6 (1:1) if the compensatory mitigation is completed before the initiation  
7 of the wetland activity.

8 **(c) A wetland that is created or restored as a water of the United**  
9 **States may be used, as an alternative to the creation or restoration**  
10 **of an isolated wetland, as compensatory mitigation for purposes of**  
11 **this section. The replacement class of a wetland that is a water of**  
12 **the United States shall be determined by applying the**  
13 **characteristics of a Class I, Class II, or Class III wetland, as**  
14 **appropriate, to the replacement wetland as if it were an isolated**  
15 **wetland.**

16 ~~(c)~~ **(d)** The off-site location of compensatory mitigation must be  
17 within:

18 (1) the same eight (8) digit U.S. Geological Service hydrologic  
19 unit code; or

20 (2) the same county;

21 as the isolated wetlands subject to the authorized wetland activity.

22 ~~(d)~~ **(e)** Exempt isolated wetlands may be used to provide  
23 compensatory mitigation for wetlands activities in state regulated  
24 wetlands. An exempt isolated wetland that is used to provide  
25 compensatory mitigation becomes a state regulated wetland.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1281, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1281 as introduced.)

WOLKINS, Chair

Committee Vote: yeas 10, nays 0.

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